

HOUSE BILL 1050

A1

2lr3114
CF 2lr2836

By: **Delegates Barkley and Davis**

Introduced and read first time: February 10, 2012

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2012

CHAPTER _____

1 AN ACT concerning

2 **Alcoholic Beverages Licensees – Adult Entertainment – Exception**

3 FOR the purpose of providing that certain prohibitions in certain jurisdictions against
4 alcoholic beverages licensees allowing certain types of adult entertainment do
5 not apply to licensees who are operators of theaters, art centers, or similar
6 establishments that present performances expressing matters of serious
7 literary, artistic, scientific, or political value; altering a prohibition relating to
8 certain adult entertainment activity to remove certain references to touching;
9 altering certain cross-references to clarify that certain references to certain
10 adult entertainment activity; terminating an exemption for certain license
11 holders from a prohibition against certain adult entertainment activity in
12 Prince George’s County; and generally relating to alcoholic beverages licensees
13 and adult entertainment.

14 BY repealing and reenacting, with amendments,

15 Article 2B – Alcoholic Beverages

16 Section 10–405, 11–304(e)(3)(i), 12–203, 12–204(d), 20–103.1(a)(2),
17 20–105.1(a)(3), 20–107(b)(2), 20–107.1(a)(2), 20–108.1(a)(3),
18 20–108.2(a)(2), 20–110(a)(2), 20–111(a)(2), 20–112(a)(2), and 20–113(a)(2)

19 Annotated Code of Maryland

20 (2011 Replacement Volume)

21 BY repealing and reenacting, without amendments,

22 Article 2B – Alcoholic Beverages

23 Section 12–204(a)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2011 Replacement Volume)

3 BY repealing
4 Chapter 262 of the Acts of the General Assembly of 2005
5 Section 2

6 BY repealing and reenacting, with amendments,
7 Chapter 262 of the Acts of the General Assembly of 2005
8 Section 3

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article 2B – Alcoholic Beverages**

12 10–405.

13 (a) The provisions of this section apply only in:

- 14 (1) Allegany County;
- 15 (2) Anne Arundel County;
- 16 (3) Calvert County;
- 17 (4) Caroline County;
- 18 (5) Carroll County;
- 19 (6) Cecil County;
- 20 (7) Charles County;
- 21 (8) Dorchester County;
- 22 (9) Frederick County;
- 23 (10) Garrett County;
- 24 (11) Harford County;
- 25 (12) Kent County;
- 26 (13) Prince George’s County;
- 27 (14) Queen Anne’s County;

1 (15) St. Mary's County;

2 (16) Except as provided in subsection (i) of this section, Washington
3 County;

4 (17) Wicomico County; and

5 (18) Worcester County.

6 (b) (1) [Any] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
7 **SUBSECTION, A** license issued under the provisions of this article shall be revoked if,
8 after hearing as provided in § 10-403 of this subtitle, any of the activities listed in this
9 section are found to occur on any premises or location for which the license was issued.

10 (2) **THE LICENSE OF A PERSON MAY NOT BE REVOKED UNDER**
11 **PARAGRAPH (1) OF THIS SUBSECTION IF:**

12 (I) **THE PERSON OPERATES A THEATER, CONCERT HALL,**
13 **ART CENTER, MUSEUM, OR SIMILAR ESTABLISHMENT THAT IS PRIMARILY**
14 **DEVOTED TO THE ARTS OR THEATRICAL PERFORMANCES; AND**

15 (II) **THE PERFORMANCES EXPRESS MATTERS OF SERIOUS**
16 **LITERARY, ARTISTIC, SCIENTIFIC, OR POLITICAL VALUE.**

17 (c) With respect to attire and conduct, a person may not:

18 (1) Be employed or used in the sale or service of alcoholic beverages in
19 or upon the licensed premises while the person is unclothed or in attire, costume or
20 clothing so as to expose to view any portion of the female breast below the top of the
21 areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals;

22 (2) Be employed or act as a hostess or act in a similar-type capacity to
23 mingle with the patrons while the hostess or person acting in a similar-type capacity
24 is unclothed or in attire, costume or clothing as described in paragraph (1) of this
25 subsection;

26 (3) Encourage or permit any person on the licensed premises to ~~touch,~~
27 caress or fondle the breasts, buttocks, anus or genitals of any other person; or

28 (4) Permit any employee or person to wear or use any device or
29 covering exposed to view, which simulates the breast, genitals, anus, pubic hair or any
30 portion of it.

31 (d) With respect to entertainment provided, a person may not:

1 (1) Permit any person to perform acts of or acts which simulate:

2 (i) The act of sexual intercourse, masturbation, sodomy,
3 bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

4 (ii) The [touching,] caressing or fondling of the breast, buttocks,
5 anus or genitals; or

6 (iii) The display of the pubic hair, anus, vulva or genitals;

7 (2) Permit any entertainer whose breasts or buttocks are exposed
8 (subject to the restrictions of paragraph (1) of this subsection) to perform closer than
9 six feet from the nearest patron; or

10 (3) Permit any person to use artificial devices or inanimate objects to
11 depict, perform or simulate any activity prohibited by paragraph (1) of this subsection.

12 (e) A person may not exhibit or show any motion picture film, still picture,
13 electronic reproduction or other visual reproduction depicting:

14 (1) Acts or simulated acts of sexual intercourse, masturbation,
15 sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited
16 by law;

17 (2) Any person being [touched,] caressed or fondled on the breast,
18 buttocks, anus or genitals;

19 (3) Scenes where a person displays the vulva or anus or the genitals;
20 or

21 (4) Scenes where artificial devices or inanimate objects are employed
22 to depict, or drawings are employed to portray, any of the prohibited activities
23 described above.

24 (f) A person may not permit any person to remain in or upon the licensed
25 premises who exposes to public view any portion of his genitals or anus.

26 (g) The provisions of this section do not permit any conduct or form of attire
27 prohibited by any other provision of statute, ordinance, rule or regulation.

28 (h) In Cecil County, in addition to the penalty provided in subsection (b) of
29 this section, if any of the activities listed in subsections (c), (d), (e), and (f) of this
30 section are found to occur on the premises for which the license was issued, the holder
31 of the license, or any employee, entertainer, or patron who performs any of the listed
32 activities is guilty of a misdemeanor and shall be fined or imprisoned according to the
33 penalty set forth in § 16-503 of this article.

1 (i) In Washington County, this section does not apply to:

2 (1) The Washington County Playhouse; or

3 (2) A theater holding a Class B beer, wine and liquor on-sale license
4 under § 6-201(w) of this article.

5 (j) (1) This subsection applies only in Caroline County.

6 (2) After a finding that the activities enumerated in this section have
7 occurred, the Board of License Commissioners may decide whether or not to revoke a
8 license, notwithstanding the mandatory provisions of subsection (b) of this section.

9 11-304.

10 (e) (3) (i) Alcoholic beverages may not be brought onto any premises
11 and consumed or transferred if the premises constitute a place of public entertainment
12 and the entertainment is of the type [listed under § 10-405(c) through (f)]
13 **PROHIBITED UNDER § 10-405** of this article.

14 12-203.

15 (a) In this section, “adult entertainment” means:

16 (1) With respect to attire and conduct:

17 (i) Employment or use of any person in the sale or service of
18 alcoholic beverages in or upon the licensed premises while the person is unclothed or
19 in attire, costume, or clothing so as to expose to view any portion of the female breast
20 below the top of the areola or of any portion of the pubic hair, anus, cleft of the
21 buttocks, vulva, or genitals.

22 (ii) Employment or use of the services of any hostess or other
23 person to mingle with the patrons while the hostess or other person is unclothed or in
24 attire, costume, or clothing as described in subparagraph (i) of this paragraph.

25 (iii) Encouragement of or permitting any person on the licensed
26 premises to [touch, caress,] CARESS or fondle the breasts, buttocks, anus, or genitals
27 of any other person.

28 (iv) Permitting any employee or person to wear or use any device
29 or covering exposed to view, which simulates the breast, genitals, anus, pubic hair, or
30 any portion of it.

31 (2) With respect to entertainment provided:

1 (i) Permitting any person to perform acts of or acts which
2 simulate:

3 1. Sexual intercourse, masturbation, sodomy, bestiality,
4 oral copulation, flagellation, or any sexual acts which are prohibited by law.

5 2. The [touching, caressing,] **CARESSING** or fondling of
6 the breast, buttocks, anus, or genitals.

7 3. The displaying of the pubic hair, anus, vulva, or
8 genitals.

9 (ii) Permitting any entertainer whose breasts and/or buttocks
10 are exposed (subject to the restrictions of subparagraph (i) of this paragraph) to
11 perform closer than 6 feet from the nearest patron.

12 (iii) Permitting any person to use artificial devices or inanimate
13 objects to depict, perform, or simulate any activity prohibited by subparagraph (i) of
14 this paragraph.

15 (3) Exhibiting or showing any motion picture film, still picture,
16 electronic reproduction, or other visual reproduction depicting:

17 (i) Acts or simulated acts of sexual intercourse, masturbation,
18 sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are
19 prohibited by law.

20 (ii) Any person being [touched, caressed,] **CARESSED** or fondled
21 on the breast, buttocks, anus, or genitals.

22 (iii) Scenes where a person displays the vulva, or anus, or the
23 genitals.

24 (iv) Scenes where artificial devices or inanimate objects are
25 employed to depict, or drawings are employed to portray, any of the prohibited
26 activities described above.

27 (b) In Baltimore City, the Board of License Commissioners may not
28 authorize nor may the holder of any class of alcoholic beverages license permit adult
29 entertainment on the licensed premises or on adjacent property over which the
30 licensee has ownership or control.

31 (c) Upon a finding by the Board of License Commissioners that a violation of
32 this section has occurred, the Board shall impose a suspension or revocation of the
33 license, fine, or both.

34 (d) This section does not apply to [any]:

1 **(1)** ANY licensee that offers adult entertainment as of May 31, 1993 or
2 the transferee of the license for the same premises if the transferee continues to offer
3 adult entertainment; **AND**

4 **(2)** A LICENSEE WHO OPERATES A THEATER, A CONCERT HALL,
5 AN ART CENTER, A MUSEUM, OR A SIMILAR ESTABLISHMENT THAT IS PRIMARILY
6 DEVOTED TO THE ARTS OR THEATRICAL PERFORMANCES, WHEN THE
7 PERFORMANCES PRESENTED EXPRESS MATTERS OF SERIOUS LITERARY,
8 ARTISTIC, SCIENTIFIC, OR POLITICAL VALUE.

9 12-204.

10 (a) This section applies only in Baltimore County.

11 (d) (1) (i) In this subsection, “adult entertainment” means
12 performances at licensed premises that are commonly called “go-go dancing”, “male
13 revues”, “female revues”, and “exotic dancing”.

14 (ii) “Adult entertainment” includes performances by individuals
15 who perform in any manner while in a state of dress in which clothing covers no more
16 than the genitals, pubic region, and areola of the female breast, as well as portions of
17 the body covered by supporting straps and devices.

18 (2) The holder of any class of alcoholic beverages license may not
19 permit adult entertainment on licensed premises or on property adjacent to the
20 licensed premises over which the holder has ownership or control.

21 (3) If the Board finds that a violation of this subsection has occurred,
22 the Board shall suspend or revoke the license for the premises where the violation
23 occurred, impose a fine on the holder of the license for the premises where the
24 violation occurred, or both.

25 (4) The provisions of this subsection do not apply to:

26 (i) The holder of an alcoholic beverages license that offered
27 adult entertainment on licensed premises for at least 5 calendar days between March
28 8, 1996 and April 8, 1996; [or]

29 (ii) A transferee of an alcoholic beverages license from a holder
30 described in item (i) of this paragraph as long as the transferee continues to offer adult
31 entertainment on the same licensed premises; **OR**

32 **(III) THE HOLDER OF AN ALCOHOLIC BEVERAGES LICENSE**
33 **WHO OPERATES A THEATER, A CONCERT HALL, AN ART CENTER, A MUSEUM, OR**
34 **A SIMILAR ESTABLISHMENT THAT IS PRIMARILY DEVOTED TO THE ARTS OR**

1 **THEATRICAL PERFORMANCES, WHEN THE PERFORMANCES EXPRESS MATTERS**
2 **OF SERIOUS LITERARY, ARTISTIC, SCIENTIFIC, OR POLITICAL VALUE.**

3 20–103.1.

4 (a) (2) “Place of public entertainment” means a business establishment
5 that does not hold a license under this article and that allows on its premises any form
6 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
7 **§ 10–405** of this article.

8 20–105.1.

9 (a) (3) “Place of public entertainment” means a business establishment
10 that does not hold a license under this article and that allows on its premises any form
11 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
12 **§ 10–405** of this article.

13 20–107.

14 (b) (2) “Place of public entertainment” means a business establishment
15 that:

16 (i) Does not have a license to sell alcoholic beverages but to
17 which patrons bring alcoholic beverages the patrons have purchased elsewhere; and

18 (ii) Allows on its premises any activity [listed in § 10–405(c)
19 through (f)] **PROHIBITED UNDER § 10–405** of this article.

20 20–107.1.

21 (a) (2) “Place of public entertainment” means a business establishment
22 that does not hold a license under this article and that allows on its premises any form
23 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
24 **§ 10–405** of this article.

25 20–108.1.

26 (a) (3) “Place of public entertainment” means a business establishment
27 that does not hold a license under this article and that allows on its premises any form
28 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
29 **§ 10–405** of this article.

30 20–108.2.

31 (a) (2) “Place of public entertainment” means a business establishment
32 that does not hold a license under this article and that allows on its premises any form

1 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
2 **§ 10–405** of this article.

3 20–110.

4 (a) (2) “Place of public entertainment” means a business establishment
5 that does not hold a license under this article and that allows on its premises any form
6 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
7 **§ 10–405** of this article.

8 20–111.

9 (a) (2) “Place of public entertainment” means a business establishment
10 that does not hold a license under this article and that allows on its premises any form
11 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
12 **§ 10–405** of this article.

13 20–112.

14 (a) (2) “Place of public entertainment” means a business establishment
15 that does not hold a license under this article and that allows on its premises any form
16 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
17 **§ 10–405** of this article.

18 20–113.

19 (a) (2) “Place of public entertainment” means a business establishment
20 that does not hold a license under this article and that allows on its premises any form
21 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
22 **§ 10–405** of this article.

23 **Chapter 262 of the Acts of 2005**

24 **[SECTION 2. AND BE IT FURTHER ENACTED, That the Prince George’s**
25 **County Board of License Commissioners of Prince George’s County shall exempt from**
26 **this Act a current alcoholic beverages license holder that currently conducts an**
27 **activity that is made unlawful by this Act only if the license holder:**

28 (a) received approval from the Board to conduct the activity on or before
29 August 15, 1981; and

30 (b) has owned the licensed premises continuously since September 1, 1981.]

31 **SECTION [3.] 2. AND BE IT FURTHER ENACTED, That this Act shall take**
32 **effect October 1, 2005.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 June 1, 2012.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.